

# PRACTICE EXAM 11: ALABAMA BUSINESS & LAW SIMULATION

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**Time allowed: 120 minutes | Questions: 50 | Passing score: 70% (35 correct)**

**Instructions for this exam: Each item asks the test-taker to identify the principal difference, distinguishing feature, or correct contrast between two related concepts. Select the option that most accurately captures the distinction.**

1. What is the principal jurisdictional difference between the Alabama Licensing Board for General Contractors and the Alabama Home Builders Licensure Board?

- A. Both boards regulate identical scopes of work under separate statutory chapters of the Alabama Code
- B. The General Contractors Board regulates commercial work at or above \$50,000 and all public works, while the Home Builders Licensure Board regulates residential one- and two-family dwellings
- C. The General Contractors Board regulates residential work while the Home Builders Licensure Board regulates commercial work under separate statutes
- D. The General Contractors Board has jurisdiction only over state-funded projects while HBLB covers private residential and commercial work

2. What is the principal difference between a pay-if-paid clause and a pay-when-paid clause in an Alabama subcontract?

- A. Pay-if-paid creates a condition precedent shifting credit risk of owner default to the subcontractor, while pay-when-paid sets only a reasonable timing expectation without shifting credit risk
- B. Pay-if-paid sets only a timing expectation while pay-when-paid creates a condition precedent shifting credit risk to the sub

C. Pay-if-paid is void as against Alabama public policy while pay-when-paid is enforceable under the statute

D. Pay-if-paid applies only to public projects while pay-when-paid applies only to private construction

3. What is the principal difference between the Alabama trade examination and the Alabama Business and Law examination for contractor licensure?

A. Both examinations test identical material under different formats and time limits administered by PSI

B. The trade examination is administered by NASCLA while the Business and Law examination is administered by PSI

C. The trade examination satisfies the Business and Law requirement automatically upon passage of the trade exam

D. The trade examination tests classification-specific technical knowledge while the Business and Law examination tests general business management and legal compliance applicable to all classifications

4. What is the principal difference between license suspension and license revocation by the Alabama Licensing Board?

A. Suspension is permanent while revocation is temporary in Board disciplinary practice

B. Suspension halts the license for a defined period after which the contractor may resume operations, while revocation permanently terminates the license and requires reapplication for any future licensure

C. Suspension is imposed without a hearing while revocation requires a formal disciplinary hearing

D. Both terms describe identical sanctions used interchangeably in Board practice and statute

5. What is the principal difference between an original contractor and a materialman under Alabama mechanic's lien law?

A. Original contractors and materialmen have identical lien filing deadlines and notice requirements regardless of contractual relationship

B. Original contractors must give written notice to the owner before any work begins while materialmen need not give any notice

C. An original contractor has a direct contract with the owner and 6 months to file the lien from last item furnished, while a materialman without direct owner contract must give written notice and has 4 months to file

D. Materialmen file in the probate court while original contractors file in the circuit court of the appropriate county

6. What is the principal difference between a performance bond and a payment bond on an Alabama public construction project?

A. A performance bond guarantees payment to subs and suppliers while a payment bond guarantees contract completion by the principal

B. Both bonds guarantee identical obligations and may be substituted for one another in any public contract

C. A performance bond is issued by the contractor while a payment bond is issued by the owner of the project

D. A performance bond guarantees completion of the contract by the principal contractor, while a payment bond guarantees payment to subcontractors and material suppliers on the project

7. What is the principal difference between a bid bond and a performance bond in Alabama public construction?

A. Both bonds guarantee identical obligations but are required at different stages of the project lifecycle

B. A bid bond is provided after award while a performance bond is provided before bid submission to the owner

C. A bid bond is typically 100% of contract value while a performance bond is typically 5% of the bid amount

D. A bid bond (typically 5% of bid) guarantees the awarded bidder will execute the contract, while a performance bond (typically 100% of contract) guarantees completion of the contract once executed

8. What is the principal difference between the NASCLA Accredited Commercial Building Contractor examination and the Alabama state trade examination?

- A. The NASCLA examination satisfies both the trade and Business and Law requirements in Alabama and other states
- B. The Alabama trade examination is recognized in 17 other participating jurisdictions automatically upon passage
- C. The NASCLA examination is a single multi-state credential satisfying the trade portion of licensing in 17 participating jurisdictions including Alabama, while the Alabama state trade examination satisfies only Alabama's trade requirement
- D. Both examinations are identical in content and may be substituted for each other in all participating states

9. What is the principal difference between an employee and an independent contractor under the IRS common law test?

- A. Employees and independent contractors have identical legal status with different labels only under federal law
- B. Employees are paid by salary only while independent contractors are paid hourly under contract
- C. The employer exercises behavioral and financial control over an employee's work, while an independent contractor controls how, when, and where the work is performed and bears business risk
- D. The dollar amount paid distinguishes the two categories regardless of control factors under the common law test

10. What is the principal difference between Form W-2 and Form 1099-NEC for federal information reporting?

- A. Form W-2 reports wages paid to employees with tax withholdings, while Form 1099-NEC reports nonemployee compensation of \$600 or more paid to independent contractors
- B. Form W-2 reports independent contractor income while Form 1099-NEC reports employee wages and withholdings
- C. Form W-2 is filed annually while Form 1099-NEC is filed quarterly with the Internal Revenue Service
- D. Both forms report identical information under different filing schedules to different agencies

11. What is the principal difference between Form 941 and Form 940 for federal employment tax reporting?

- A. Both forms report federal income tax withholding on identical filing schedules under federal law
- B. Form 941 is filed annually for FUTA while Form 940 is filed quarterly for FICA reporting
- C. Form 941 covers only employers with fewer than 10 employees while Form 940 covers larger employers
- D. Form 941 is filed quarterly to report wages, federal income tax withheld, and FICA taxes, while Form 940 is filed annually to report federal unemployment tax (FUTA)

12. What is the principal difference between FUTA and Alabama SUTA?

- A. FUTA and SUTA share identical wage bases and rates under federal and state law
- B. FUTA is withheld from the employee while SUTA is paid by the employer on each pay period
- C. FUTA is administered by the Alabama Department of Labor while SUTA is administered by the IRS
- D. FUTA is the federal unemployment tax with a \$7,000 wage base and 0.6% effective rate, while SUTA is the Alabama state unemployment tax with an \$8,000 wage base and rates varying by employer experience

13. What is the principal difference between trust fund taxes and the employer's matching share of FICA for Trust Fund Recovery Penalty purposes?

- A. Trust fund taxes (federal income tax withheld plus the employee share of FICA) are covered by the Trust Fund Recovery Penalty, while the employer's matching share of FICA is not subject to TFRP and is collected only from the entity
- B. Both categories are equally subject to TFRP without any distinction under federal law
- C. Trust fund taxes are the employer's matching share only, while the withheld amounts are not subject to TFRP under federal law
- D. The TFRP applies to state unemployment taxes only, not to federal trust fund taxes withheld

14. What is the principal difference between federal Form W-4 and Alabama Form A-4?

- A. Both forms are filed with the IRS for federal income tax withholding under federal law

B. Form W-4 captures Alabama state withholding while Form A-4 captures federal withholding information

C. Form A-4 replaces Form W-4 for Alabama employees and is filed with the federal government for federal withholding

D. Form W-4 captures federal income tax withholding information for the employee, while Form A-4 captures Alabama state income tax withholding information

15. What is the principal difference between termination for cause and termination for convenience under a standard construction contract?

A. Both forms of termination require identical written notice and cure procedures under the contract

B. Termination for cause permits the owner to end the contract without paying for work performed under the contract

C. Termination for cause requires material breach by the contractor as the basis and typically involves notice and a cure period, while termination for convenience permits the owner to end the contract without cause but requires payment for work performed plus a defined percentage of unperformed profit

D. Termination for cause is available only to the contractor while termination for convenience is available only to the owner

16. What is the principal difference between a lump sum contract and a cost plus fee contract without a guaranteed maximum price?

A. Both contract types impose identical cost overrun risk on the contractor regardless of pricing structure

B. A lump sum contract reimburses actual costs while cost plus fee charges a fixed contract price

C. A lump sum contract requires hourly billing while cost plus fee uses unit prices under the contract

D. A lump sum contract assigns cost overrun risk to the contractor in exchange for a fixed price, while a cost plus fee contract without a guaranteed maximum price assigns cost overrun risk to the owner who reimburses all actual costs plus an agreed fee

17. What is the principal difference between substantial completion and final completion of a construction project?

- A. Substantial completion occurs only after final completion is achieved on the project schedule
- B. Substantial completion is the milestone permitting beneficial occupancy by the owner with punch list items remaining, triggering the warranty period and stopping liquidated damages, while final completion occurs after all punch list items are addressed and triggers final payment with retainage release
- C. Final completion permits beneficial occupancy while substantial completion is reached after all work is complete and accepted
- D. Both milestones are reached simultaneously at the end of construction in standard contract practice

18. What is the principal difference between an enforceable liquidated damages clause and an unenforceable penalty under Alabama construction contract law?

- A. Both clauses are enforceable regardless of the relationship between the amount and actual damages incurred
- B. A liquidated damages clause is always unenforceable while a penalty clause is enforced under Alabama law
- C. A liquidated damages clause reflects a reasonable estimate of anticipated damages at the time of contract formation and is enforceable, while a penalty clause sets an amount bearing no reasonable relation to anticipated damages and is unenforceable as a punishment
- D. The distinction depends solely on whether the dollar amount exceeds \$10,000 in the contract clause

19. What is the principal difference between a change order and a Construction Change Directive (CCD) under standard contract practice?

- A. A change order is a bilaterally executed document where owner and contractor have agreed on scope, cost, and schedule impact of the change, while a Construction Change Directive is unilaterally issued by the owner directing the contractor to proceed when the parties cannot agree on price or time impact
- B. A CCD is signed by both parties while a change order is signed only by the owner under standard practice
- C. Change orders apply to private projects while CCDs apply only to public projects under federal law
- D. Both documents authorize work changes in identical manner with no procedural difference under the contract

20. What is the principal difference between offer and acceptance in contract formation?

- A. Offer and acceptance are interchangeable concepts in Alabama contract law and may substitute for each other
- B. Offer is the manifestation of willingness to enter into a bargain with definite terms by one party, while acceptance is the manifestation of assent to the terms of the offer unconditionally by the other party
- C. Acceptance must precede the offer to be valid under common law contract formation rules
- D. Both elements may be supplied by a single party unilaterally without involvement of the other party

21. What is the principal difference between direct cost and job overhead (general conditions) on a construction project?

- A. Direct cost and job overhead are interchangeable terms for the same category of expense in construction accounting
- B. Direct cost is recovered through markup while job overhead is reimbursed at actual cost without markup
- C. Job overhead covers only the contractor's profit while direct cost covers all other items in the bid
- D. Direct cost consists of project-specific items tied to particular trade scopes (material, labor, equipment, subcontractors), while job overhead consists of project-specific items not tied to a particular trade scope (superintendent, trailer, project permits, project-specific insurance)

22. What is the principal difference between job overhead and general overhead in construction cost accounting?

- A. Both terms describe identical expense categories with different labels in construction accounting practice
- B. Job overhead is recovered through markup while general overhead is charged directly to specific projects
- C. Job overhead consists of project-specific costs (superintendent allocated to the project, project trailer, project-specific permits and insurance), while general overhead is the cost of running the business itself (corporate office rent, executive salaries, company accounting) recovered through markup on direct cost
- D. Job overhead applies only to public projects while general overhead applies only to private construction

23. What is the principal difference between markup and margin in construction pricing?

- A. Markup is profit expressed as a percentage of cost ( $\text{profit} \div \text{cost}$ ), while margin is profit expressed as a percentage of revenue ( $\text{profit} \div \text{revenue}$ ), producing different numerical results on the same job
- B. Markup and margin produce identical numerical results on the same cost base under construction accounting
- C. Markup uses revenue as the denominator while margin uses cost as the denominator in the calculation
- D. Margin applies to lump sum contracts while markup applies to cost plus contracts only under standard practice

24. What is the principal difference between the Alabama Competitive Bid Law (Title 41-16) and the Alabama Public Works Law (Title 39)?

- A. Both statutes have identical thresholds and apply to identical types of contracts under Alabama law
- B. The Competitive Bid Law applies only to construction projects while the Public Works Law applies to general state purchases
- C. The Competitive Bid Law has a \$50,000 threshold while the Public Works Law has a \$15,000 threshold under each statute
- D. The Competitive Bid Law (Title 41-16) generally governs state and local procurement with a \$15,000 threshold, while the Public Works Law (Title 39) specifically governs public works construction projects with a \$50,000 threshold for advertised bidding

25. What is the principal difference between bid withdrawal due to mistake and bid revision after contract award?

- A. Bid withdrawal due to a material clerical or mathematical error is permitted before acceptance under the Alabama bid mistake doctrine, while bid revision is not permitted after contract award and the contractor is bound to the price submitted
- B. Both bid withdrawal and bid revision are available at any time before final payment under Alabama law
- C. Withdrawal is permitted only after award while revision is permitted only before submission of the bid
- D. Both processes require approval by the Alabama Licensing Board before they become effective under state law

26. What is the principal difference between the percentage-of-completion method and the completed-contract method of construction accounting?

- A. Both methods recognize revenue at identical times during the project lifecycle under accounting standards
- B. Percentage-of-completion recognizes all revenue at project end while completed-contract recognizes revenue throughout
- C. Percentage-of-completion recognizes revenue and profit in proportion to costs incurred during the contract, while completed-contract defers all revenue and profit recognition until the contract is substantially complete
- D. Percentage-of-completion is required for small contractors while completed-contract is required for large contractors

27. What is the principal difference between the balance sheet and the income statement in a contractor's financial reporting?

- A. Both statements show the same information at the same time under different titles in standard reporting
- B. The balance sheet shows revenues and expenses while the income statement shows assets and liabilities at year-end
- C. The balance sheet shows assets, liabilities, and equity at a specific point in time (a snapshot), while the income statement shows revenues, expenses, and net income over a defined period of time (a flow report)
- D. The balance sheet is prepared annually while the income statement is prepared monthly under standard practice

28. What is the principal difference between an overbilling and an underbilling on a contractor's WIP schedule?

- A. An overbilling occurs when billings to date exceed revenue earned (recognized as a current liability), while an underbilling occurs when costs and earned revenue exceed billings to date (recognized as a current asset)
- B. Both terms describe identical positions under different labels in the WIP schedule and balance sheet
- C. Overbilling is recognized as a current asset while underbilling is recognized as a current liability on the balance sheet

D. Overbilling and underbilling are recognized only on the income statement, never the balance sheet

29. What is the principal difference between working capital and net worth as financial measures?

A. Working capital and net worth are computed using the same formula and are interchangeable in surety review

B. Working capital equals current assets minus current liabilities and measures short-term financial strength, while net worth equals total assets minus total liabilities and measures overall ownership equity in the business

C. Working capital is measured at year-end while net worth is measured monthly under accounting standards

D. Working capital includes long-term assets while net worth excludes them entirely from the calculation

30. What is the principal difference between a conditional lien waiver and an unconditional lien waiver?

A. Both waivers have identical legal effect upon signing regardless of subsequent payment behavior

B. A conditional waiver is signed after payment is received while an unconditional waiver is signed before payment is issued

C. A conditional waiver is effective only upon actual receipt of the payment specified, while an unconditional waiver is effective immediately upon signing regardless of whether payment is actually received

D. Conditional waivers are required by Alabama statute while unconditional waivers are prohibited under state law

31. What is the principal difference between exempt and non-exempt employees under the Fair Labor Standards Act?

A. Non-exempt employees are entitled to overtime pay at 1.5 times the regular rate for hours over 40 in a workweek, while exempt employees satisfy specific salary and duties tests (executive, administrative, professional, etc.) and are not entitled to overtime regardless of hours worked

B. Exempt employees are paid hourly while non-exempt employees are paid salary under standard practice

C. Both categories receive overtime under identical FLSA rules regardless of duties or salary

D. Exempt status is determined solely by job title without reference to duties under federal law

32. What is the principal difference between at-will employment and contract employment in Alabama?

A. At-will employment may be terminated by either party at any time for any lawful reason without notice, while contract employment is governed by the specific terms of the employment contract including notice, cause, and term provisions

B. Both relationships are governed by identical termination procedures regardless of any written contract under state law

C. At-will employment requires a written employment contract while contract employment does not require any documentation

D. At-will employment is illegal in Alabama; only contract employment is permitted under the state's labor laws

33. What is the principal difference between Title VII of the Civil Rights Act of 1964 and the Age Discrimination in Employment Act (ADEA)?

A. Both statutes cover identical protected categories and apply at identical employer-size thresholds under federal law

B. Title VII prohibits employment discrimination based on race, color, religion, sex, or national origin and applies at 15 or more employees, while the ADEA prohibits age-based discrimination against workers 40 and older and applies at 20 or more employees

C. Title VII protects workers age 40 and older while ADEA protects other categories under federal employment law

D. Title VII applies only to federal employers while ADEA applies to all private and public employers regardless of size

34. What is the principal difference between the Family and Medical Leave Act (FMLA) and the Americans with Disabilities Act (ADA)?

A. Both laws apply at the same employer-size threshold and cover the same protected activities under federal law

B. FMLA provides up to 12 weeks of unpaid leave for specified family and medical reasons at employers with 50+ employees within a 75-mile radius, while the ADA prohibits employment discrimination based on disability and requires reasonable accommodation at employers with 15+ employees

C. FMLA covers age discrimination while the ADA covers family and medical leave under federal employment law

D. Both statutes are administered by the Social Security Administration under federal compliance frameworks

35. What is the principal difference between Form I-9 verification and E-Verify under federal immigration compliance?

A. Form I-9 is filed electronically with DHS while E-Verify is paper-based for routine new hire verification

B. Both processes are identical and either may be used to satisfy federal verification requirements for new hires

C. Form I-9 is the paper or electronic form completed by the new employee documenting identity and work authorization retained by the employer, while E-Verify is the federal electronic system that compares I-9 data against DHS and SSA records to confirm work authorization

D. E-Verify replaces Form I-9 entirely for employers participating in the federal program under DHS rules

36. What is the principal difference between Commercial General Liability (CGL) insurance and builders' risk insurance?

A. Both policies cover identical property and liability exposures on construction projects under standard policy forms

B. CGL covers the project under construction while builders' risk covers third-party injury and property damage

C. CGL covers bodily injury and property damage to third parties caused by the contractor's operations (excluding the contractor's own work in progress), while builders' risk covers physical damage to the project under construction itself, including materials installed and stored on site

D. CGL is purchased by the owner while builders' risk is purchased by the contractor under standard construction practice

37. What is the principal difference between risk transfer and risk retention as risk management strategies?

- A. Risk transfer shifts the financial consequences of a loss to a third party (e.g., insurance carrier or indemnitor) in exchange for premiums or contract terms, while risk retention means the contractor accepts and absorbs any losses that occur from the identified risk
- B. Both strategies require purchase of insurance coverage for the identified exposure under standard practice
- C. Risk transfer applies to small risks while risk retention applies to catastrophic risks under construction practice
- D. Both terms describe identical management responses under different labels in risk management frameworks

38. What is the principal difference between workers' compensation insurance and Commercial General Liability insurance?

- A. Both policies cover employee injuries and third-party injuries equally without distinction under Alabama law
- B. Workers' compensation is the mandatory state-administered insurance covering employee work-related injuries as the exclusive remedy against the employer, while CGL covers bodily injury and property damage to third parties caused by the contractor's operations
- C. Workers' compensation covers third-party claims while CGL covers employee claims under standard construction practice
- D. CGL is mandatory under state law while workers' compensation is optional for most employers in Alabama

39. What is the principal difference between contractual indemnification and waiver of subrogation in construction risk allocation?

- A. Both concepts describe identical insurance mechanisms under different labels in construction contracts
- B. Indemnification is a contractual promise by one party to hold the other harmless from specified losses or claims arising under the contract, while waiver of subrogation is an insurance-related concession in which the insurer gives up the right to pursue recovery from a third party after paying its insured's claim

C. Indemnification is required by Alabama statute while waiver of subrogation is prohibited under state insurance law

D. Both terms apply only to public construction projects under the Little Miller Act framework

40. What is the principal difference between OSHA Form 300 and Form 301 in workplace injury recordkeeping?

A. Both forms serve identical purposes and may be substituted for each other in routine OSHA recordkeeping

B. Form 300 is the annual summary posted from February through April while Form 301 is the running log entered as incidents occur

C. Form 300 reports fatalities only while Form 301 reports near-misses only under OSHA recordkeeping rules

D. Form 300 is the running Log of Work-Related Injuries and Illnesses maintained during the calendar year with each entry summarized, while Form 301 is the detailed Injury and Illness Incident Report completed for each specific recordable incident with witness statements and root cause information

41. What is the principal difference between OSHA fatality reporting and OSHA reporting of in-patient hospitalizations, amputations, or eye losses?

A. Both events trigger reporting on the same timeline under 29 CFR 1904.39 with identical procedures

B. Fatalities must be reported to OSHA within 8 hours of when the employer learns of the death, while in-patient hospitalizations, amputations, or losses of an eye must be reported within 24 hours

C. Fatalities must be reported within 24 hours while hospitalizations must be reported within 8 hours under OSHA rules

D. Neither category triggers any immediate reporting requirement to OSHA outside the annual recordkeeping forms

42. What is the principal difference between a Stormwater Pollution Prevention Plan (SWPPP) and a Notice of Intent (NOI) under the NPDES Construction General Permit?

A. Both documents serve identical purposes and may be substituted for one another under the federal permit

B. The NOI is the on-site implementation plan while the SWPPP is the regulatory filing with ADEM in Alabama

C. The SWPPP is the on-site plan identifying pollution sources and best management practices that must be implemented during construction, while the NOI is the regulatory filing submitted to ADEM seeking coverage under the Construction General Permit

D. SWPPPs are required only on sites of 5+ acres while NOIs apply to sites of 1+ acre under federal rules

43. What is the principal difference between OSHA's Focus Four enforcement priorities and the General Duty Clause?

A. The Focus Four (falls, struck-by, caught-in/between, electrocutions) are specific construction hazard categories targeted for priority enforcement and outreach because they account for approximately 60% of construction fatalities, while the General Duty Clause is a broad statutory requirement that each employer furnish a workplace free from recognized hazards likely to cause death or serious physical harm

B. Both terms describe identical OSHA enforcement frameworks under federal occupational safety law

C. The Focus Four is statutory while the General Duty Clause is a guidance policy without legal effect on employers

D. The General Duty Clause applies only to general industry while the Focus Four applies only to construction work

44. What is the principal difference between the critical path and total float on a CPM schedule?

A. Both concepts describe the same scheduling element under different terms in standard CPM practice

B. The critical path is the shortest path while total float measures activity duration in days on the schedule

C. The critical path is the longest path through the project network that determines the minimum project duration with zero total float on its activities, while total float is the amount of time a non-critical activity can be delayed without delaying overall project completion

D. The critical path measures project cost while total float measures project schedule under CPM scheduling

45. What is the principal difference between substantial completion and beneficial occupancy in a construction project?

A. Both terms describe distinct milestones occurring at different points in the project schedule under standard contracts

B. Substantial completion is a contractual milestone reached when the work is sufficiently complete that the owner can occupy the project for its intended purpose with minor punch list items remaining, while beneficial occupancy is the practical use of the project by the owner — typically these occur simultaneously, with substantial completion being the formal designation triggering legal consequences (warranty start, retainage release, end of liquidated damages)

C. Beneficial occupancy precedes substantial completion in standard contract practice under Alabama construction law

D. Beneficial occupancy requires final completion while substantial completion does not require punch list completion

46. What is the principal difference between the Schedule of Values (SOV) and the Application for Payment in construction billing?

A. Both documents serve identical functions and may be combined into a single instrument under standard contracts

B. The Application for Payment establishes contract pricing while the SOV requests payment on monthly intervals

C. The SOV is filed only on public projects while the Application for Payment applies to private projects only

D. The Schedule of Values is the one-time document executed at project start that breaks down the contract sum into line items, while the Application for Payment is the periodic billing document submitted each month referencing the SOV line items and showing percent complete and amount due

47. What is the principal difference between a mechanic's lien and a judgment lien against real property?

A. A mechanic's lien is a statutory security interest arising directly from the provision of labor or materials to the property that may be perfected within statutory deadlines without prior litigation, while a judgment lien arises only after a court judgment has been obtained and recorded against the property owner

B. Both liens require prior court judgment to be filed and recorded against the property owner under state law

C. Mechanic's liens apply only to commercial property while judgment liens apply only to residential property

D. Both are identical statutory instruments with different labels used in Alabama property and real estate law

48. What is the principal difference between a conditional lien waiver and a final lien waiver in construction payment practice?

A. Both waivers have identical legal effect upon signing regardless of payment receipt or work completion

B. A conditional waiver becomes effective only upon actual receipt of the payment specified (whether partial or final), while a final waiver releases all lien rights through final payment on the project regardless of further work

C. Conditional waivers are required by Alabama statute while final waivers are prohibited under state lien law

D. A final waiver becomes effective only upon actual receipt of payment while a conditional waiver is effective immediately

49. What is the principal difference between a limited liability company (LLC) and a C corporation under federal taxation?

A. Both entities are taxed identically at the corporate level under federal tax law without distinction

B. An LLC is taxed at the corporate level while a C corporation is taxed only at the shareholder level on distributions

C. Both entities require S election to obtain pass-through tax treatment under federal corporate tax law

D. An LLC is taxed by default as a pass-through entity (single-member LLC as a disregarded entity, multi-member LLC as a partnership) with profits flowing to members' personal returns, while a C corporation is taxed separately at the corporate level (21% federal rate) with distributions to shareholders taxed again as dividends

50. What is the principal difference between Articles of Incorporation and a Certificate of Formation in Alabama business formation?

A. Articles of Incorporation are filed with the Alabama Secretary of State to create a corporation under the Alabama Business Corporation Law, while a Certificate of Formation is filed with the Alabama Secretary of State to create an LLC under the Alabama Limited Liability Company Law

- B. Both documents create identical legal entities under different titles in Alabama business formation
- C. Articles of Incorporation are filed by LLCs while Certificates of Formation are filed by corporations under the same statute
- D. Both documents are filed with the IRS rather than the Alabama Secretary of State at formation of any entity

## PRACTICE EXAM 11: ANSWER KEY AND EXPLANATIONS

1. B — The General Contractors Board regulates commercial work at or above \$50,000 and all public works regardless of value, while the Home Builders Licensure Board regulates residential one- and two-family dwellings. The jurisdictional split is statutory under separate chapters of the Alabama Code, and a contractor pursuing both commercial and residential work in Alabama must hold credentials from both boards.
2. A — Pay-if-paid creates a true condition precedent — receipt of payment from the owner — that must be satisfied before the prime owes the sub, shifting the credit risk of owner default down the contracting chain. Pay-when-paid sets only a reasonable timing expectation; the prime must still pay the sub within a reasonable time even if the owner never pays. The distinction is critical because pay-if-paid clauses must use explicit risk-shifting language to be enforceable as such.
3. D — The trade examination tests classification-specific technical knowledge of the work itself (general building, mechanical, electrical, etc.), while the Business and Law examination tests general business management, contracts, payroll, insurance, and legal compliance applicable to all classifications. Both must be passed independently; passing the trade examination does not satisfy the Business and Law requirement under Alabama licensing rules.
4. B — Suspension halts the license for a defined period after which the contractor may resume operations once the suspension expires and any conditions are met, while revocation permanently terminates the license and requires a full new application for any future licensure. The distinction determines whether the contractor's business can survive the disciplinary action or must be rebuilt from a new application after revocation.
5. C — An original contractor has a direct contract with the owner and 6 months from the last item furnished to file the lien statement, while a materialman without direct owner contract must give written notice to the owner before furnishing materials to preserve full lien rights and has only 4 months to file. The distinction reflects the lesser privity of the materialman; the notice and shorter deadline protect the owner from claims by parties with no direct contract.
6. D — A performance bond guarantees completion of the contract by the principal contractor according to the contract terms, while a payment bond guarantees payment to subcontractors and material suppliers performing on the project. Both bonds are required on Alabama public works above the statutory threshold under the Little Miller Act; the performance bond protects the owner from non-completion while the payment bond protects downstream parties from non-payment.
7. D — A bid bond (typically 5% of bid) guarantees that the awarded bidder will execute the contract and furnish performance and payment bonds within the required time, while a performance bond (typically 100% of contract) guarantees completion once the contract is executed. The two bonds

operate at different stages — bid bonds at award, performance bonds during construction — and serve different protective functions for the owner.

8. C — The NASCLA examination is a single multi-state credential satisfying the trade portion of licensing in 17 participating jurisdictions including Alabama, while the Alabama state trade examination satisfies only Alabama's trade requirement. The NASCLA option streamlines multi-state expansion for contractors but never substitutes for the Alabama Business and Law examination, which must be passed separately.
9. C — The employer exercises behavioral and financial control over an employee's work (how, when, where) while an independent contractor controls how, when, and where the work is performed and bears business risk including profit and loss potential. The control test drives federal tax classification, workers' compensation coverage, and federal employment law application; misclassification carries significant back-tax and penalty exposure.
10. A — Form W-2 reports wages paid to employees together with federal, state, and FICA withholdings for the year, while Form 1099-NEC reports nonemployee compensation of \$600 or more paid to independent contractors during the year. The distinction tracks the employee/contractor classification; misclassification triggers both the wrong form and unpaid payroll tax obligations.
11. D — Form 941 is filed quarterly to report wages, federal income tax withheld, and FICA taxes (Social Security and Medicare), while Form 940 is filed annually to report federal unemployment tax (FUTA). The two forms cover different tax obligations on different schedules; Form 941 is due the last day of the month following each quarter, and Form 940 is due January 31.
12. D — FUTA is the federal unemployment tax with a \$7,000 wage base and 0.6% effective rate after the standard state credit, while SUTA is the Alabama state unemployment tax with an \$8,000 wage base and rates varying by employer experience under the experience-rating system. Both fund unemployment insurance but at different levels of government with separate wage bases and rates.
13. A — Trust fund taxes — federal income tax withheld from employees plus the employee share of FICA — are covered by the Trust Fund Recovery Penalty because they are held in trust for the government, while the employer's matching share of FICA is not subject to TFRP and is collected only from the entity itself. The TFRP can be asserted personally against responsible persons who willfully fail to remit trust fund taxes, making this distinction critical for owners and officers.
14. D — Form W-4 captures federal income tax withholding information for the employee (filing status, dependents, additional withholding) and is filed with the federal IRS, while Form A-4 captures Alabama state income tax withholding information and is retained for state withholding purposes. Both forms must be completed at hire; using only the W-4 leaves state withholding without the proper documentation under Alabama law.
15. C — Termination for cause requires material breach by the contractor as the basis and typically involves notice and a cure period before termination, while termination for convenience permits the owner to end the contract without cause but requires payment for work performed plus a defined percentage of unperformed profit. The distinction governs both the procedural requirements and the financial consequences to the contractor.
16. D — A lump sum contract assigns cost overrun risk to the contractor in exchange for a fixed contract price, while a cost plus fee contract without a guaranteed maximum price assigns cost overrun risk to the owner who reimburses all actual costs plus an agreed fee. The two structures allocate risk in opposite directions; a guaranteed maximum price layered onto cost plus shifts a portion of the overrun risk back to the contractor above the cap.

17. B — Substantial completion is the milestone permitting beneficial occupancy by the owner with punch list items remaining, triggering the warranty period and stopping liquidated damages, while final completion occurs after all punch list items are addressed and triggers final payment with retainage release. The distinction matters because substantial completion shifts numerous legal consequences before all work is finished.
18. C — A liquidated damages clause reflects a reasonable estimate of anticipated damages at the time of contract formation and is enforceable as the agreed measure, while a penalty clause sets an amount bearing no reasonable relation to anticipated damages and is unenforceable under Alabama law as a punitive imposition. Courts examine the relationship between the amount and the anticipated harm to determine which category applies.
19. A — A change order is a bilaterally executed document where owner and contractor have agreed on scope, cost, and schedule impact of the change, while a Construction Change Directive (CCD) is unilaterally issued by the owner directing the contractor to proceed when the parties cannot agree on price or time impact. The CCD allows work to continue without delay; pricing under a CCD is typically reconciled later by audit or formal change order.
20. B — Offer is the manifestation of willingness to enter into a bargain with definite terms by one party, while acceptance is the manifestation of assent to the terms of the offer unconditionally by the other party. Both elements together with consideration form the basic structure of contract formation under Alabama common law; an unconditional acceptance creates the contract while a conditional response constitutes a counter-offer.
21. D — Direct cost consists of project-specific items tied to particular trade scopes (material, labor, equipment, subcontractors for each trade), while job overhead consists of project-specific items not tied to a particular trade scope (superintendent, project trailer, project-specific permits, project-specific insurance). Both are project costs; the distinction is whether the cost can be allocated to a specific trade or covers the project as a whole.
22. C — Job overhead consists of project-specific costs (superintendent allocated to the project, project trailer, project-specific permits and insurance), while general overhead is the cost of running the business itself (corporate office rent, executive salaries, company accounting) recovered through markup on direct cost. Job overhead can be billed to the specific project; general overhead must be recovered across projects through the markup structure.
23. A — Markup is profit expressed as a percentage of cost ( $\text{profit} \div \text{cost}$ ), while margin is profit expressed as a percentage of revenue ( $\text{profit} \div \text{revenue}$ ), producing different numerical results on the same job. A 20% markup yields approximately a 16.7% margin on the same dollar profit; confusing the two leads to systematic under-pricing because the denominator differs.
24. D — The Competitive Bid Law (Title 41-16) generally governs state and local procurement of goods, equipment, and services with a \$15,000 threshold for advertised competitive bidding, while the Public Works Law (Title 39) specifically governs public works construction projects with a \$50,000 threshold for advertised bidding. The two statutes operate in parallel but cover different procurement categories with different thresholds.
25. A — Bid withdrawal due to a material clerical or mathematical error is permitted before acceptance under the Alabama bid mistake doctrine when prompt written notice with documentation is given, while bid revision is not permitted after contract award and the contractor is bound to the price submitted. The mistake doctrine protects the bidder against unconscionable enforcement of clear computational errors; once the contract is signed, the price is binding.
26. C — Percentage-of-completion recognizes revenue and profit in proportion to costs incurred during the contract using the cost-to-cost methodology, while completed-contract defers all

revenue and profit recognition until the contract is substantially complete. Percentage-of-completion is the standard method for long-term contracts under GAAP because it better matches revenue to the period in which work is performed.

27. C — The balance sheet shows assets, liabilities, and equity at a specific point in time as a snapshot of financial position, while the income statement shows revenues, expenses, and net income over a defined period of time as a flow report. The distinction reflects the fundamental difference between stock and flow measures in financial accounting and determines which questions each statement can answer.
28. A — An overbilling occurs when billings to date exceed revenue earned and is recognized as a current liability ("billings in excess of costs and estimated earnings on uncompleted contracts"), while an underbilling occurs when costs and earned revenue exceed billings to date and is recognized as a current asset ("costs and estimated earnings in excess of billings on uncompleted contracts"). The WIP schedule reveals whether the contractor has been billing ahead of or behind work performed.
29. B — Working capital equals current assets minus current liabilities and measures short-term financial strength and liquidity, while net worth equals total assets minus total liabilities and measures overall ownership equity in the business. Both are critical to surety underwriting and Board financial review, but they measure different dimensions of financial health.
30. C — A conditional waiver is effective only upon actual receipt of the payment specified — if the check bounces the waiver never takes effect — while an unconditional waiver is effective immediately upon signing regardless of whether payment is actually received. The conditional waiver protects the signing party against waiving lien rights without actually being paid; unconditional waivers should be signed only after payment has cleared.
31. A — Non-exempt employees are entitled to overtime pay at 1.5 times the regular rate for hours over 40 in a workweek, while exempt employees satisfy specific salary and duties tests (executive, administrative, professional, computer, or outside sales) and are not entitled to overtime regardless of hours worked. Misclassifying employees as exempt to avoid overtime is a common FLSA violation that triggers back-wage liability and liquidated damages.
32. A — At-will employment may be terminated by either party at any time for any lawful reason without notice, while contract employment is governed by the specific terms of the employment contract including notice, cause, and term provisions. Alabama is a strong at-will employment state; only an express contract or recognized public-policy exception modifies the at-will presumption.
33. B — Title VII prohibits employment discrimination based on race, color, religion, sex, or national origin and applies at 15 or more employees, while the ADEA prohibits age-based discrimination against workers 40 and older and applies at 20 or more employees. The different thresholds and protected categories mean a contractor's employment law compliance obligations expand as headcount crosses each statutory threshold.
34. B — FMLA provides up to 12 weeks of unpaid leave for specified family and medical reasons at employers with 50 or more employees within a 75-mile radius, while the ADA prohibits employment discrimination based on disability and requires reasonable accommodation at employers with 15 or more employees. The two laws serve different protective purposes and apply at different thresholds; both must be navigated together when an employee has a serious health condition that may also be a disability.
35. C — Form I-9 is the paper or electronic form completed by the new employee documenting identity and work authorization, retained by the employer for the required period, while E-Verify

is the federal electronic system that compares I-9 data against DHS and SSA records to confirm work authorization. Alabama requires E-Verify for every employer under the Beason-Hammon Act; the I-9 remains a separate federal requirement regardless of E-Verify use.

36. C — CGL covers bodily injury and property damage to third parties caused by the contractor's operations, excluding the contractor's own work in progress (the "your work" exclusion), while builders' risk covers physical damage to the project under construction itself, including materials installed and stored on site. The two policies cover non-overlapping exposures; a contractor needs both to be properly insured during construction.
37. A — Risk transfer shifts the financial consequences of a loss to a third party — typically an insurance carrier through a premium or another party through a contractual indemnity — while risk retention means the contractor accepts and absorbs any losses that occur from the identified risk. Risk transfer and risk retention are two of the four primary risk management responses, along with avoidance and reduction.
38. B — Workers' compensation is the mandatory state-administered no-fault insurance covering employee work-related injuries as the exclusive remedy against the employer, while CGL covers bodily injury and property damage to third parties caused by the contractor's operations. The "employer's liability exclusion" in CGL prevents overlap; workers' compensation handles employee claims and CGL handles third-party claims.
39. B — Indemnification is a contractual promise by one party to hold the other harmless from specified losses or claims arising under the contract, while waiver of subrogation is an insurance-related concession in which the insurer gives up the right to pursue recovery from a third party after paying its insured's claim. Indemnification operates between the contracting parties; waiver of subrogation operates between insurers and the third party that might otherwise be pursued for reimbursement.
40. D — Form 300 is the running Log of Work-Related Injuries and Illnesses maintained during the calendar year with each entry summarized in one line, while Form 301 is the detailed Injury and Illness Incident Report completed for each specific recordable incident with witness statements and root cause information. Both forms must be retained for 5 years following the year they cover; Form 300A is the annual summary derived from Form 300.
41. B — Fatalities must be reported to OSHA within 8 hours of when the employer learns of the death, while in-patient hospitalizations, amputations, or losses of an eye must be reported within 24 hours under 29 CFR 1904.39. The shorter window for fatalities reflects the severity of the event; missing either deadline triggers separate citations independent of the underlying incident.
42. C — The SWPPP is the on-site plan identifying pollution sources, drainage patterns, and best management practices that must be implemented during construction, while the NOI is the regulatory filing submitted to ADEM seeking coverage under the Construction General Permit. The SWPPP must be developed before the NOI is filed; the NOI obtains permit coverage while the SWPPP governs site implementation throughout construction.
43. A — The Focus Four (falls, struck-by, caught-in/between, electrocutions) are specific construction hazard categories targeted for priority enforcement and outreach because they account for approximately 60% of construction fatalities, while the General Duty Clause is the broad statutory requirement under Section 5(a)(1) that each employer furnish a workplace free from recognized hazards likely to cause death or serious physical harm. The Focus Four is an enforcement priority within the broader statutory framework of the General Duty Clause.
44. C — The critical path is the longest path through the project network that determines the minimum project duration with zero total float on its activities, while total float is the amount of time a non-

critical activity can be delayed without delaying overall project completion. Any delay to a critical path activity delays the project by an equal amount; activities with positive total float can absorb delays without impact to the completion date.

45. B — Substantial completion is the contractual milestone reached when the work is sufficiently complete that the owner can occupy the project for its intended purpose with minor punch list items remaining, while beneficial occupancy is the practical use of the project by the owner — typically these occur simultaneously, with substantial completion being the formal designation triggering legal consequences (warranty start, retainage release, end of liquidated damages). The contract document declares substantial completion; beneficial occupancy is the practical fact that often coincides with it.
46. D — The Schedule of Values is the one-time document executed at project start that breaks down the contract sum into line items by trade or work component, while the Application for Payment is the periodic billing document submitted each month referencing the SOV line items and showing percent complete and amount due. The SOV provides the structure; each Application for Payment populates that structure with current period progress and requested payment.
47. A — A mechanic's lien is a statutory security interest arising directly from the provision of labor or materials to the property and may be perfected within statutory deadlines without prior litigation, while a judgment lien arises only after a court judgment has been obtained and recorded against the property owner. The mechanic's lien gives the contractor security on the specific property improved without first proving the underlying debt in court; the judgment lien requires the litigation pathway first.
48. B — A conditional waiver becomes effective only upon actual receipt of the payment specified (whether partial or final), while a final waiver releases all lien rights through final payment on the project regardless of further work performed. The conditional waiver protects against waiving rights without receiving payment; the final waiver is the closeout release used at project end after all payment is in hand.
49. D — An LLC is taxed by default as a pass-through entity (single-member LLC as a disregarded entity, multi-member LLC as a partnership) with profits flowing to members' personal returns, while a C corporation is taxed separately at the corporate level at the 21% federal rate with distributions to shareholders taxed again as dividends. The LLC avoids the double taxation inherent in the C corporation structure, making it the default choice for closely held construction businesses absent specific reasons to incorporate.
50. A — Articles of Incorporation are filed with the Alabama Secretary of State to create a corporation under the Alabama Business Corporation Law, while a Certificate of Formation is filed with the Alabama Secretary of State to create an LLC under the Alabama Limited Liability Company Law. The two filings create different legal entities under different governing statutes; the entity choice drives the formation document used.